

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

20-cv-864 SRN/LIB

Thomas Evenstad,  
Plaintiff,RECEIVED  
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CLERK, U.S. DISTRICT COURT  
ST. PAUL, MNv.  
Paul Schnell, Michelle Smith,  
Nate Knutson, Karen Robinson,  
Tracy Hosking, Vicki Janssen, Deneen Clemons,  
Minnesota Department of Corrections,  
State of Minnesota,  
Defendants.

COMPLAINT

JURY TRIAL  
DEMANDED

## INTRODUCTION

SCANNED

APR 01 2020

WOS

U.S. DISTRICT COURT ST. PAUL

Plaintiff Thomas Evenstad (herein "Evenstad") brings this lawsuit against Defendants, who are Minnesota Department of Corrections officials/administrators for violating Evenstad's right to redress government with grievances under the First Amendment of the United States Constitution; First Amendment retaliation; Violations of Evenstad's Due Process rights under the Fifth and Fourteenth Amendments of the U.S. Constitution; Violations of Evenstad's access to courts and Equal Protection. Evenstad sues all defendants in their official as well as individual capacities, and sues the <sup>MN Dep 4 of 6</sup> Corrections and the State of Minnesota under Monell liability.

Evenstad seeks Preliminary Injunctions prohibiting the Minnesota Department of Corrections (herein "DOC") and/or MCF-Rush City (herein "RC") officials from charging him or disciplining him for engaging in First Amendment protected speech/actions, specifically for writing to DOC Central Office (herein "CO") or requesting DOC Personnel Files or other Public Data, such as RC staffing/overtime data at issue. Evenstad's PI does not include non-public, confidential and/or personal information subject to appropriate redaction(s).

This lawsuit is of public concern as it demonstrates the DOC's belief shown in their actions that they are above the law, and that since no one, including the Courts, will hold them accountable, they can do as they please regardless of the effects on staff and/or prisoners. This mindset is what murdered Joe Coomm.

The DOC's wanton disregard for compliance with their own policies as well as the law, has created a safety and security ~~crisis~~ crisis in our State's prisons. The DOC has created, condoned, and enabled an environment of violence in which two high-profile deaths of Correctional Officers have been allowed to occur, which were both 100% predictable, and in fact preventable. Euenstad himself in 2017 urged the DOC Commissioner to cease the use of dangerous weapons in the MCF-STILLWATER'S FOR-PROFIT Slave Labor Industry (Minncor), but as always over 22 years, Euenstad's suggestion fell on deaf ears.

The DOC's utter incompetence, negligence and arrogance is responsible for the chaos, lawlessness and dysfunction the OLA report lays bare.

Euenstad has proposed, via March 5, 2020 letter to Governor Tim Walz the creation of a Prison Safety Task Force. Euenstad, with his unique experience of 40+ years of correctional experience in 8-hour shifts at/in all 7 adult prisons, has volunteered to provide leadership on it if Appointed.

Prisoners cannot reasonably be expected to follow rules when those in authority over them don't follow rules. The DOC is not "Contributing to a Safer Minnesota" as it's motto falsely alleges, but rather, through mismanagement and a total lack of leadership and judicial oversight is contributing to a more dangerous State as the OLA report shows.

In this lawsuit, both the Courts and the Public will see how the DOC violates prisoners' rights and specifically Everstad's rights, and then attempts to insulate itself from judicial oversight by foreclosing/preventing Everstad's ability to exhaust administrative remedy - a prerequisite to litigation - only to then assert an "affirmative defense" in which the DOC alleges Everstad failed to exhaust administrative remedy. The DOC routinely engages in this conduct as a pre-planned/premeditated legal strategy to evade liability and to protect them from judicial oversight/scrutiny. Everstad has every confidence this Court will see through this DOC Custom/Practice in this action. Everstad asserts he has acted in good faith and has made a good faith effort to exhaust administrative remedy, only to be threatened with retaliation via disciplinary adverse actions if he contacts CO.

### FACTS

1. On January 26, 2020, Everstad wrote to CO to DOC Commissioner/Defendant Paul Schnell (requesting DOC ombudsman Mark Haase be copied) requesting transfer to a medium custody/security prison as Everstad has been classified as medium since December, 2019. See Ex. 1
2. Under the Equal Protection Clause of the U.S. Constitution, Everstad has the right to be transferred to a medium prison or provided similar out of cell time and recreational opportunities as similarly situated medium security prisoners who are physically residing in Mediums.
3. Everstad is locked up in his cell 22 hours per day and often 23 hours per day due to recreation cancellations.

3. At Medium prisons, prisoners such as Evenstad who are not in administrative or disciplinary segregation are allowed to be out of their cells for six-plus hours per day on weekdays, and all day until lockdown - approximately 14-15 hours - on weekends and are offered significantly more recreation (yard/bym) opportunities vs RC.
4. Evenstad exhausted facility chain-of-command at RC requesting transfer or similar privileges as medium. Every request from the Unit Lieutenant through the Warden was denied/refused prior to Evenstad writing the Commissioner seeking relief. Evenstad wrote to "Capacity Management" (Transfer Coordinator) Tracy Hosking prior to Commissioner Schnell seeking transfer to Medium. Defendant Hosking denied Evenstad's request, violating his right to Equal Protection.
5. Evenstad informed Defendants Hosking and Schnell that RC Administration had reclassified Evenstad to medium from close, finding Evenstad "... is most likely better suited at a medium facility" and that "... the discipline he received at FRB that elevated his classification was likely not appropriate." See Exh. 6
6. In other words, despite determining that 54 year old Evenstad, who suffers from PTSD due to chronic state-induced trauma, is better suited at a medium and that the false, retaliatory discipline Evenstad was subjected to in June 2019 which resulted in Evenstad being transferred to more dangerous prisons at Stillwater and Rush City was inappropriate, RC and DOC Defendants Schnell, Smith, Knutson, Hosking, Janssen and Clemons left Evenstad to suffer at RC. Nearly 1/3 of RC's prisoners are convicted of homicide. RC/DOC has demonstrated Deliberate Indifference and Recklessly Endangered Evenstad.

7. This Court should note, that of importance to Everstad's Equal Protection, Deliberate Indifference and Reckless Endangerment claims with respect to the issue of medium transfer/privileges, that DOC prisoners at Mediums who are convicted of "Risk Codes" are removed from the general population for prisoner and especially staff safety and never are allowed to set foot in a medium again they are reclassified to medium from Close Custody.
8. When prisoners in Close Custody reclass to medium for extended period of model behavior, they are not removed from the general population for their safety and the DOC refuses to segregate medium prisoners in separate units or wings of their Close Custody prisons as Everstad requested. Everstad submits the DOC cannot have it both ways.
9. If Close prisoners pose such a dire threat to medium staff and prisoners, then medium prisoners must be kept separate/segregated within Close prisons from close prisoners and provided similar out of cell time and recreational opportunities as medium facilities.
10. In Everstad's 1-26-2020 letter to Commissioner Schnell, Everstad informed Defendant's Schnell, Smith and Knutson that RC officials, including Defendant Janssen were violating DOC Policy and Everstad's constitutional rights by failing/refusing to place Everstad on Medical Placement. See Exh. 1
11. Everstad's medical records at RC contain multiple "Medical Opinion Forms" in which Everstad has been determined to be medically unable to work in any capacity permanently. See i.e. Exh. 7.

12. RC officials refuse to comply with DOC Policy that entitles Everstad to Medical Placement, which in turn, entitles Everstad to be reclassified from Unemployed Idle (UI) to Medical Placement (MP). The difference in these status' is being locked up 22+ hours per day, seven days per week on UI, vs being treated as a worker and allowed several additional hours out of cell daily and increased recreational opportunities.
13. Everstad's physical and mental health has been destroyed by the abusive, negligent conduct of denying Everstad transfer to Medium and denial of MP, causing significant & atypical hardship to Everstad, exacerbating his anxiety, PTSD, depression for no legitimate penological reason.
14. Everstad is scheduled for release to the community on April 24, 2020. Everstad asserts that while he personally presents zero threat to public safety, the DOC's custom/practice of denying transfers to safer prisons where prisoners are allowed out of their cells more than one to two hours per day and offered more recreation as well as denying mentally ill prisoners, who are disabled as Everstad is Medical Placement is placing the general public at higher risk than would be the case if DOC followed their own policies and respected prisoners' rights.
15. Everstad specifically asserts here the denial of transfer to medium and denial of medical placement has caused intense mental anguish and psychological duress/harm and has substantially damaged Everstad's mental and physical health. The DOC is intentionally increasing Everstad's



likelihood of failing on parole - the antithesis of DOC's stated mission: Reducing recidivism.

16. On February 5, 2020 Defendant Janssen sent Everstad a Memo threatening Everstad with "disciplinary action" should Everstad continue to exercise his First Amendment right to contact CO by mail marked "Special Mail" in compliance with DOC Policy. See Exhibits 2, 3.
17. Defendant Knutson is referenced as asking Janssen to respond on his behalf and is copied. Defendant Hosking is the Transfer Coordinator who refused Everstad's written request for transfer to Medium. Defendant Smith is above RC administrators, defendant Hosking and defendant Knutson in DOC's Chain-of-command, and is thus responsible for their violations of policies and rights as is her direct superior - Defendant Paul Schnell.
18. Defendants Hosking, Knutson, Smith, Schnell and Janssen's intent in threatening Everstad with retaliatory punitive action for exercising his protected First Amendment right to redress government with grievances was to chill Everstad from continuing to seek redress of grievances. This is the definition of First Amendment retaliation.
19. On March 9, 2020, Everstad sent a "Kite" (written communique) to Defendant Chemons - RC Data Compliance Officer - requesting public data per MN Ch. 13, Data Practices Act regarding RC staffing, including overtime data/records. See Exh. 4
20. Everstad sought the data for litigation purposes against the DOC, presentations to the legislature, and for the Prison Safety Task Force. Everstad wrote Governor Walz on March 5, 2020 recommending he create to address prison safety.

21. Everstael sues defendants Clemons, Jonsson, Robinson, Knutsen, Smith and Schnell for violating <sup># First Amendment Retaliation</sup> DOC policy and state law in denying his Ch. 13 request and for denying him any/all "Personnel information on any staff." See Exh. 5
22. Defendant Clemons sent Everstael a memo dated March 13, 2020 threatening Everstael with disciplinary action - Disobeying a Direct Order - should Everstael request public data. Everstael is entitled to this data per DOC policy and per state law. See Exh. 5
23. This Memo states Everstael "... may NOT receive personnel information on any staff. I am giving you this directive to stop asking for such information. Copy: Lt. G. Peterson, Discipline." See Exh. 5 This Memo threatens Everstael with disciplinary action - an adverse action - for the allowable exercise of Everstael's First Amendment right to seek public data - textbook First Amendment retaliation. This Memo was designed to chill a person of ordinary firmness from continuing to exercise First Amendment rights. Unfortunately for the DOC, Everstael is not a person of ordinary firmness - Praise Be To God & Lord Jesus!
24. The data Everstael sought/seeks is not only relevant to Everstael's work on prison reform, but also highly relevant to Everstael's and other prisoner's ~~staff~~ safety, staff safety and mental and physical health of all RC SHU residents such as Everstael locked up 22 hrs/day.
25. The State's OIA report "Safety in State Correctional Facilities" February, 2020 Evaluation (herein "OLA") discusses the issues of staffing at great length, especially in Ch. 3 "Staff Management."
26. Examples of staff shortages jeopardizing prisoner safety include: Inability to effectively monitor



prisoners to ensure they do not enter prohibited areas, especially other prisoner's cells as happened to Eversaul three days ago and increased tensions among prisoners caused by more frequent confinement to cells, which Eversaul has been subject to 22 or 23 hrs/day since June ~~26~~ 26, 2019, and since November 8, 2019 at RC.

27. Use of overtime has decreased safety in prisons. OCA at 39.

"Officers who are tired may be less alert and more likely to miss warning signs of impending trouble or attempts to smuggle contraband. Staff told us they do not have confidence that tired officers will be able to effectively support their coworkers in an emergency situation. Further, officers working overtime shifts can be more short-tempered than they would be otherwise, making them more likely to unnecessarily create or escalate conflicts. Constant overtime use can also effect safety indirectly by affecting employee stress levels, mental health, and morale." OCA at 39. All these issues affect Eversaul.

28. Defendants Schell, Smith, Knutson, Hostberg, Junssen and Chemons have demonstrated deliberate indifference to Eversaul's safety and have recklessly endangered Eversaul by refusing to transfer him to a safer, lower custody/security prison despite determination Eversaul is better suited at a medium and never should have been transferred to close custody/security in the first place. RC's prisoners have nearly 1/3 in for homicide and Eversaul's life & safety placed in danger unnecessarily for no legitimate penological purpose.

29. RC's custom/practice of cancelling recreation for SHU residents like Eversaul while not cancelling the for-profit prison industry slave labor Minncor has

substantially and adversely affected Everstad's mental and physical health and recklessly endangered his safety. Prison staff ranked denial of recreation as a more serious safety issue than denials of work, school/education and behavioral/mental health treatment. DCA at 51.

30. Everstad sues Defendant Robinson for all policy and law violations cited in this lawsuit as Defendant Robinson is the DOC's Policy and Legal Director. Everstad submits Exhibits 8-46 in advance of his 1st Amended Complaint he seeks representation.

### CLAIMS

- I. First Amendment Retaliation
- II. First Amendment Violations
- III. Due Process Violations, Including Access To Courts
- IV. Deliberate Indifference
- V. Reckless Endangerment
- VI. Cruel and Unusual Punishment
- VII. Equal Protection, VIII. PREA Violations

### ~~AND~~ RELIEF REQUESTED

(Money)

Everstad seeks monetary compensation/damages in excess of \$50,000 from Defendants in their individual capacities for emotional pain and suffering, fear and terror, intentional infliction of extreme emotional harm, deliberate indifference toward and reckless endangerment of Everstad's physical safety, life, and mental health. Everstad seeks non-money damages/relief from Defendants in their official capacities as provided by law, including, but not limited to, further retaliation by Defendants.